

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ANN McCRACKEN; JOAN FARRELL;
SARAH STILSON; KEVIN McCLOSKEY;
CHRISTOPHER TRAPATSOS; and
KIMBERLY BAILEY, as individuals
and as representatives of the classes,

Case No.: 6:14-cv-06248-FPG-MWP

Plaintiffs,

vs.

VERISMA SYSTEMS, INC.;
UNIVERSITY OF ROCHESTER;
STRONG MEMORIAL HOSPITAL; and
HIGHLAND HOSPITAL,

Defendants.

STIPULATION AND ORDER

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel for Plaintiffs and Defendants, subject to the approval of the Court, that the parties will proceed as follows:

1. Pursuant to the Court's Text Orders (CM/EFC Docket Numbers 213 and 217), Plaintiffs were to file a stipulation or motion to dismiss any claim(s) foreclosed by the decision of the Court of Appeals in *Ortiz v. Ciox Health LLC* and/or amend their complaint on or before February 4, 2022.
2. The parties agree there is no private right of action under the NY PHL Section 18 (“Section 18”) and, as such, Plaintiffs’ individual and the certified Rule 23 class claims asserting violations of Section 18 must be dismissed.

3. The parties agree that they cannot simply stipulate to dismissal of the Section 18 claims because there is a certified Rule 23 class and, as such, the claims' dismissal requires Court approval and potential notice to the class.

4. The parties therefore agree to defer the dismissal of plaintiffs' individual and class Section 18 claim until the parties have addressed the viability of plaintiffs' remaining claims as matter of law pursuant to the briefing schedule set forth in CM/EFC Docket Number 217, unless the parties jointly agree to move for its dismissal at an earlier time.

5. The parties disagree as to whether *Ortiz* forecloses plaintiffs' remaining individual or class claims brought pursuant to NY GBL Section 349 and for unjust enrichment.

6. In light of this stipulation, plaintiffs agree that they are not filing an amended complaint and, instead, individually and on behalf of the class, will proceed with their claims as stated in their Second Amended Complaint (CM/EFC Docket Number 40), with the exception of the Section 18 claim, which will be addressed as discussed in paragraph 4 above, and reserve the right to rely upon the record in this case with respect to any motion practice, further litigation, and trial to the extent such reliance is permissible under the Federal Rules of Civil Procedure.

| FARACI LANGE LLP | GOLDBERG SEGALLA |
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| <p>NICHOLS KASTER, PLLP</p> <p>BY: <u>s/ Anna P. Prakash</u> Anna P. Prakash, MN Bar No. 0351362 4700 IDS Center 80 South Eighth Street Minneapolis, MN 55402-2242 Telephone: 612-256-3200 aprakash@nka.com</p> <p>ATTORNEYS FOR PLAINTIFFS AND THE CLASSES</p> | <p>WARD GREENBERG HELLER & REIDY LLP</p> <p>By: <u>s/ Amanda Burns</u> Amanda Burns Eric J. Ward 1800 Bausch & Lomb Place Rochester, New York 14604 Telephone: (585) 454-0700 Fax: (585) 231-1911 aburns@wardgreenberg.com eward@wardgreenberg.com</p> <p><i>ATTORNEYS FOR DEFENDANTS UNIVERSITY OF ROCHESTER MEDICAL CENTER, STRONG MEMORIAL HOSPITAL AND HIGHLAND HOSPITAL</i></p> |
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IT IS SO ORDERED.

Dated: February 7, 2022



Mark W. Pedersen
United States Magistrate Judge